DEPARTMENT OF THE SENATE
PROCEDURAL INFORMATION BULLETIN

hl.pro.prob.15320

No. 209

for the sitting period 6—8 February 2007
and estimates hearings 12—16 February 2007

20 February 2007

SENATE SITTINGS

REFERENCE OF BILLS TO COMMITTEES

Debate on a Selection of Bills Committee report on 8 February provided an occasion for non-government senators to complain about what they described as abuse by the government of the system of referring bills to committees. They claim that the government is deliberately overloading the system by referring many bills, in some cases before the bills had even been initiated in either House, and by setting unrealistic deadlines for the committees to report. Amendments were moved by the non-government parties, but rejected, to refer some additional bills and to change the times for inquiries.

Subsequently, in speaking on the same day to the report of the Community Affairs Committee on disability services, Senator Patterson referred to her concerns about the health of committee staff because of the extreme workloads imposed upon them in dealing with bills inquiries. (A procedural point in relation to this report was that by leave it was added to the list of committee reports to be debated later that day after general business.)

The connection between these two matters was taken up in the estimates hearing for the Department of the Senate, when the Clerk was questioned about the effects of recent referrals of bills and deadlines. He pointed out, amongst other things, that bills reported from committees with very tight deadlines are often not dealt with in the chamber for weeks afterwards.

The committees, however, continue to have some successes in having bills amended following their inquiries. Because the provisions of bills are often referred to committees before the bills are received in the Senate, amendments resulting from Senate committee

inquiries are sometimes made in the House of Representatives. This was the case with the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006, which was dealt with in the Senate on 6 February. Sometimes the committees have an impact before a bill is introduced, as with the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2007.

OTHER COMMITTEE INQUIRIES

Although the government, through its majority in the chamber, now controls the subjects which are referred to the committees for specific inquiries, such inquiries do not always turn out favourably and occasionally lead to accountability revelations. The report of the Rural and Regional Affairs and Transport Committee on Australia's oil supply, presented on 7 February, drew attention to the amount of fuel wasted by company cars being driven unnecessarily for the purpose of raising their odometer readings to gain a tax benefit.

References to committees now usually coincide with the government's agenda. The Employment, Workplace Relations and Education Committee received on 8 February a reference on education standards, a matter being "pushed" by the government currently. References moved by the non-government parties continue to be rejected.

The accusation that the government is overloading the system could well be supported by reference to the fact that another joint committee has been established, to add to the twelve already existing. The resolution to appoint a joint committee to oversee the Australian Commission for Law Enforcement Integrity was passed on 8 February. When the relevant statute was passed, the non-government parties unsuccessfully attempted to combine the committee with one of the other existing committees.

PARLIAMENTARY PRIVILEGE

The President determined that a matter of privilege should have precedence under standing order 81 on 6 February, and the reference to the Privileges Committee was passed without debate on the following day. The matter relates to a suggestion that a witness before a committee may have given false or misleading evidence. The person concerned is involved in politics, and the treatment of the matter contrasts with that of a similar matter, given precedence by the President in September 2005, but in respect of which the motion to refer it to the committee was rejected, with a vote on party lines and with complaints about privilege matters being dealt with on a partisan basis. Following that incident, the President was asked at an estimates hearing for the Department of the Senate to ensure that privilege matters are determined on a non-partisan basis in the future.

ORDERS FOR DOCUMENTS

A motion to require the production of the government's advice on the military commissions to be used to try Guantanamo Bay prisoners, including David Hicks, was rejected on 7 February. The matter was subsequently raised in estimates hearings when the advice was again refused.

FORMAL MOTIONS

The matter of David Hicks was also the subject of virtually daily motions moved by the Greens as formal business under standing order 66. These motions are clearly moved with regard to the reported discontent amongst government backbenchers over the treatment of Hicks. No government senators "crossed the floor" on the motions, however.

A motion on the ACT's proposed civil union laws was more successful in that regard on 8 February, in that Senator Humphries "crossed" to support the motion.

TEMPORARY ORDERS RENEWED

The temporary orders relating to the extension of the adjournment debate on Tuesdays and the ability of committee members to appoint temporary substitutes were renewed on 6 and 7 February, respectively.

ODGERS' AUSTRALIAN SENATE PRACTICE

The Supplement to the 11th edition of *Odgers' Australian Senate Practice*, updated to 31 December 2006, was tabled on 6 February and is on the Internet.

ACCOUNTABILITY REPORT

A motion moved by Senator Murray on 8 February referred to a series of accountability measures adopted by the Canadian government, and called on the Australian government to consider the adequacy of Australia's existing legislative framework. The motion was rejected.

If committees are given inadequate time to conduct their bills inquiries, and then other inquiries are kept to matters favourable to government, their effectiveness will be limited but may not be entirely removed.

ESTIMATES HEARINGS

As the major surviving accountability mechanism, the estimates hearings continue to attract much attention. Senators took full advantage of their right to attend hearings of any committee and ask questions; at one stage there were 19 senators at one hearing.

PROCEDURAL MATTERS

The following matters of procedural interest arose. (The abbreviations in brackets refer to the relevant committees, where appropriate.)

(1) **Refusals to answer questions** There were several flat refusals to answer questions without any attempt to properly raise claims of public interest immunity in accordance with past resolutions of the Senate. Officers and ministers are clearly aware that there is now no possibility of any remedy being taken in the Senate against refusals to answer. Perhaps the most creative reason for a refusal occurred in relation to the garments to be provided to the leaders at the forthcoming APEC meeting: disclosure of information would spoil the surprise (F&PA). On another occasion information was refused because it was not published (Ec). If senators were confined to receiving information already published there would be no point in holding estimates hearings. There was a repetition of the refusal to disclose forward estimates (CA).

An officer of the Department of Employment and Workplace Relations repeated an assertion that a provision in the Public Service Code of Conduct in the Public Service Act referring to "appropriate confidentiality" provided him with a reason for declining to disclose any information he regarded as confidential. This was the subject of an advice last year, and the advice was tabled in this hearing of the committee. The committee, after a private meeting, made a statement that officers should not seek to raise this claim (EWRE). Attached to this bulletin is a copy of the advice.

The misconception that the exemption grounds in the Freedom of Information Act automatically provide reasons for not disclosing information in committee hearings again surfaced (L&CA). This question was comprehensively dealt with in the past (see *Odgers' Australian Senate Practice*, 11th ed., pp 474-5).

(2) Advice to government An answer to a question on notice cast a revealing light on the matter of disclosure of advice provided to government. The answer stated:

> Consistent with the long-standing practice of successive Governments DFAT does not comment on legal advice that may or may not have been provided to the Government, or

> persons performing functions on behalf of the Government, unless the Government decides in a particular case to do so.

This is an admission that the only rule relating to disclosure of advice is that it is disclosed whenever the government chooses to do so. This should put paid to past claims that advice is never disclosed (which is patently not true given the occasions when ministers voluntarily disclose favourable advice) or is only disclosed in most exceptional circumstances (see the report of the Finance and Public Administration References Committee in October 2005 on the Gallipoli Peninsular Works, PP 228/2005, pp xxii-xxiv). There were, however, other refusals to disclose advice, particularly relating to the US military commissions.

(3) Telstra The government has apparently decided that Telstra will never appear at estimates hearings again, in spite of the large number of questions always asked about its activities and the regulations applied to it. Questions will now have to be directed to the relevant department (ECITA).

(4) Other inquiries The following up of other inquiries at the estimates hearings was a notable feature of these hearings, particularly in the Community Affairs Committee. The persistence of that committee in pursuing matters relating to the family tax benefit was rewarded by an undertaking that relevant information would in the future be included in the departmental annual report.

(5) Inquiries into bills At the hearing for the Department of the Senate, senators requested statistics on committee inquiries into bills. When provided, these statistics could reveal whether the committees are being overloaded as alleged (see above, under References of Bills to Committees) (F&PA).

(6) Proposed showing of video A proposal by a minister to show a video recording at the hearing of the Finance and Public Administration Committee in relation to the proposed government smartcard did not proceed when it was pointed out that standing order 26 (4) and (5) restrict estimates hearings, unlike other committee inquiries, to the questioning of ministers and officers. The minister appeared not to understand the basis of this advice, and a supplementary advice was provided. Both advices were published by the committee and are attached to this bulletin.

(7) Provisions of bills The advice provided at the last hearings that questions should not be asked at estimates hearings about the provisions of bills which are the subject of special inquiries by committees was again referred to and accepted (L&CA).

(8) Relevance The Senate's 1999 resolution stating the test of relevance of questions in estimates hearings had to be invoked on several occasions (particularly FAD&T). There

appeared to be no systematic attempt by ministers, however, to limit questioning on supposed relevance grounds.

(9) Questions on notice The tardiness of some departments in answering questions on notice was again referred to. Again it was disclosed that departments and agencies may prepare their answers promptly but the answers are then held in ministers' offices (particularly EWRE).

In some hearings senators expressed discontent with the numbers of questions taken on notice, and complained that this was often an alternative technique for not answering questions.

(10) Ordinary annual services. A check on the additional appropriation bills disclosed a number of items included in the ordinary annual services bill which are not ordinary annual services and should not be in that bill (see *Odgers*, 11th ed., pp 282-4 and Supplement). This matter is encompassed in the inquiry by the Finance and Public Administration Committee on transparency of public funding.

(11) Chairs and substitutes. Difficulties again occurred about arrangements for the absence of chairs. If chairs are absent, deputy chairs, if present, act as chairs. The provision allowing the chairs to appoint temporary acting chairs may be used only when the chairs and the deputy chairs are absent. There seems to be a determination on the part of the chairs to keep the non-government deputy chairs out of the chairing role, and this leads to some elaborate manoeuvres, such as replacing of chairs for a specified period.

The new provision allowing members of committees to appoint temporary substitute members was used during the hearings.

MATTERS EXAMINED

Amongst many others, the following notable matters were revealed in the hearings.

(1) The Prime Minister's $10 billion water plan was not referred to Cabinet (F&PA). Ministers refused to answer several questions about the plan, and no detailed figures were forthcoming. Various departments were asked about their activity, or lack of activity, in relation to climate change and the water plan.

(2) On the other hand, Cabinet had approved the grant of $250,000 to a person who is constructing a state coach as a personal gift to the Queen. No reason was given for this grant (F&PA).

(3) The funding and operations of the CSIRO were extensively explored and attention was drawn to the power of private sponsors of research to withhold the results from publication, particularly in relation to coal (ECITA).

(4) A blow-out of $60 million in the budget of the Department of Immigration and Citizenship was disclosed (L&CA).

(5) The fire on the ship *Westralia* has not been exhausted as a subject, with several new revelations (FAD&T).

(6) The Christmas Island detention centre costs approximately $1 million per detainee, initial cost only (L&CA).

(7) ASIC's pursuit of the James Hardie directors was disclosed just before the hearings and ASIC's other activities were explored (Ec).

(8) The Department of Defence's finances and acquisitions were again examined, on this occasion highlighted by the theft of weapons (FAD&T).

(9) There were further questions about contacts between the government and the religious sect the Exclusive Brethren (several committees).

(10) The regularly recurring subjects were again examined: David Hicks; immigration visas; other activities of the Department of Immigration and Citizenship; detainees; political donations; the Customs cargo management project; AWB (via the Wheat Export Authority); the Iraq war.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate.

Like this bulletin, these documents may be reached through the Senate home page at www.aph.gov.au/senate

Inquiries: Clerk's Office
(02) 6277 3364

PROCEDURAL INFORMATION BULLETIN

NO. 209

ATTACHMENTS

Advices provided and published during estimates hearings

AUSTRALIAN SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

CLERK OF THE SENATE

hl.let.15054

6 June 2006

Senator Penny Wong
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Wong

ESTIMATES HEARINGS
EVIDENCE BY DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS

You asked for some further advice (that is, further to the advice provided by the Deputy Clerk, Dr Rosemary Laing, dated 29 May 2006) on certain answers given by the Department of Employment and Workplace Relations, and particularly by Mr J O'Sullivan of that department, at the estimates hearings of the Employment, Workplace Relations and Education Legislation Committee on 29 and 30 May 2006.

This note will be somewhat more detailed than should be necessary, because there is a great deal of ambiguity and lack of clarity in what the department put to the committee in those answers, and it is necessary to untangle various strands of the answers.

The department, in the person of Mr O'Sullivan, whose answers were not qualified by the secretary of that department, Dr Boxall, invoked subsection 13(6) of the *Public Service Act 1999* as an impediment to answering certain questions in the hearing. That subsection is one of a number of parts of the Public Service Code of Conduct, and provides:

> An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.

Mr O'Sullivan, and the department, believe that this provision could be breached by disclosure of some information to a parliamentary committee. He referred to it as imposing an obligation on public servants (transcript of hearing, 29 May 2006, p. 14), and twice stated that answering some questions could be a breach of the provision (30 May 2006, p. 18).

The first point to be noted is that the subsection is not a normal statutory secrecy provision, which prohibits the disclosure of particular information. Like all statements in codes of conduct, it is cast in terms of uncertainty and judgement: it refers to "appropriate" confidentiality.

Even if it were a prescriptive secrecy provision, contrary to what Mr O'Sullivan thinks an officer cannot be in breach of such a provision by providing information to a parliamentary

committee. This matter was extensively canvassed by senators in 1991, and, after some uncertainty on the part of some government advisers, the considered view of the then Solicitor-General, in accordance with the established law on the subject, was that a statutory secrecy provision does not prevent the provision of information to a House of the Parliament or its committees unless there is something in the provision which indicates that it has that application. This established principle is shared by the current government and its advisers and was expressed in the Senate in 2003:

> A general statutory secrecy provision does not apply to disclosure of information in parliament or any of its committees unless the provision is framed to have such an application. (Senator Minchin, Minister for Finance and Administration, *Senate Debates*, 4 December 2003, pp 19442-3.)

Most departments and agencies are now aware of this point. It is most surprising that any officer of any department should still be referring to the possibility of being in breach of a statutory provision by providing information to a parliamentary committee. At one point Mr O'Sullivan referred to the statutory provision not providing a bar to questions being answered (transcript, 29 May 2006, p. 42), but that statement was inconsistent with his other references to his being in breach of the subsection by answering the questions. If he could be in breach of it, how could it not be a bar? There was, to say the least, a lack of clarity in what he put to the committee.

At one stage Mr O'Sullivan stated that the point he was raising was not a public interest immunity claim (transcript, 30 May 2006, p. 18). This is perhaps the most remarkable of his statements. The difficulty he finds with subsection 13(6) is, according to this statement, something other than the normal grounds of public interest immunity claims.

A public interest immunity claim, that is, a claim that it would not be in the public interest to disclose certain information to a parliamentary committee, is simply the vehicle by which issues about the sensitivity of particular information are raised. This is made clear by the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, published by the Department of the Prime Minister and Cabinet. In the discussion of public interest immunity claims in that document the following issues are listed as issues which may give rise to such claims, which must be made by a minister:

- material disclosing cabinet deliberations
- material consisting of advice to government
- material subject to statutory secrecy provisions.

The *Government Guidelines* refer to the following categories of information which "could form the basis of a claim of public interest immunity":

> material disclosing any deliberation or decision of the Cabinet, other than a decision that has been officially published, or purely factual material the disclosure of which would not reveal a decision or deliberation not officially published
>
> material disclosing matters in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the course of, or for the purpose of, the deliberative processes involved in the functions of the Government *where disclosure would be contrary to the public interest* [emphasis added] (para 2.32).

In relation to statutory secrecy provisions, the *Government Guidelines* refer to them as "considerations [which] may affect a decision whether to make documents or information available", and states that the Attorney-General's Department should be consulted when occasions arise involving such provisions (para 2.33).

If Mr O'Sullivan considered that the information for which he was asked could fall into either of these categories, or could be subject to a statutory secrecy provision, he should have raised them as possible grounds for a public interest immunity claim, which, as the *Government Guidelines* state, must be made by a minister. He should have indicated to the committee that he intended to ask the responsible minister to consider whether a public interest immunity claim should be raised on those grounds, after consulting with the Attorney-General's Department if he thought that a statutory secrecy provision was involved. Instead, Mr O'Sullivan and the department made their own decision that subsection 13(6) prevented the answering of the questions. It should be emphasised again that the stated grounds are only factors to be taken into consideration as to whether a public interest immunity claim should be made by a minister.

As indicated in the advice of 29 May 2006, questions about when advice was provided to ministers' offices have frequently been answered in committee hearings. In these cases, if the *Government Guidelines* have been followed, and if any consideration has been given to raising a public interest immunity claim, it has been decided either that there is no basis for such a claim or that any basis for such a claim is outweighed by the public interest in revealing the required information to the committee. It is not clear that Mr O'Sullivan and the Department of Employment and Workplace Relations realise that the issues they sought to raise are factors to be weighed by ministers in this process of public interest balance.

At another stage of the hearing, Mr O'Sullivan drew an analogy between what he regards as his obligation to comply with section 13(6) of the Public Service Act and an obligation to maintain confidentiality about a freedom of information request which might be made by a senator (transcript, 20 May 2006, p. 18). This is an unhelpful analogy. Estimates hearings, and indeed other parliamentary inquiries, are based on a constitutional premise of a great public interest in parliamentary scrutiny of how ministers and departments perform their functions, which may on rare occasions be outweighed by a public interest in not disclosing particular information. It has already been noted that this department appears not to appreciate the weighing of public interests which must occur, and the relative weight they bear. Does it think that the responsibility of a minister and a department to account to the Parliament for the minister's and department's performance of official functions has only the same public interest quota as the privacy of an FOI inquirer, or, alternatively, the performance by a senator of the senator's individual functions as a parliamentarian? Privacy is not the issue, and, on the other interpretation, the situations are hardly equivalent in terms of the public interests involved. The use of this analogy only raises more problems than it answers in relation to this department's approach to its accountability obligations.

Mr O'Sullivan and the department contended that information about when answers to questions on notice were provided to ministers' offices falls within the prohibited area (transcript, 30 May 2006, pp 17-19). It is to draw an extremely long bow to claim that such information falls within the category of advice to government. That, no doubt, is why other departments have regularly answered questions about when answers were provided to ministers' offices. The departments which answered such questions in the recent hearings

include the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, and the Department of Foreign Affairs and Trade.

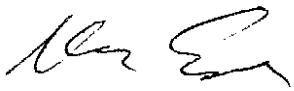
Subsequently it was clarified that the answers had not yet been finalised (transcript, p. 19), but there was no indication that this involved any withdrawal from the position put earlier. This only serves to indicate the lack of clarity in the position adopted by Mr O'Sullivan and the department.

Mr O'Sullivan used the language of objecting to the questions. Perhaps he thinks that his taking objection to questions automatically triggers the Senate's Privilege Resolution 1(10). This provides that, if a witness objects to answering any question, the committee is to consider the stated ground of the objection and to deliberate and make a decision upon it. That provision, however, refers to witnesses of all kinds, not specifically public service witnesses, and to all possible objections to questions (the example given in the provision is self-incrimination). In relation to public service witnesses and possible public interest immunity claims, it is not triggered unless and until a minister makes such a claim. A public servant who considers that a minister should be given opportunity to make a public interest immunity claim is covered by Privilege Resolution 1(16), which allows an officer reasonable opportunity to refer questions to superior officers or a minister. As has been indicated, the ground for not answering the questions which Mr O'Sullivan seems to have raised is one of the possible grounds of a public interest immunity claim, and if he thought that it could arise he should have referred the question to the minister under Privilege Resolution 1(16).

I suggest that this note be drawn to the attention of the minister and the department for consideration before the next estimates hearings. That course may at least achieve the goal of properly identifying and articulating any difficulty which officers see in the answering of particular questions. It should also ensure that any claims that questions should not be answered are properly considered and made by the minister.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely



(Harry Evans)

AUSTRALIAN SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

CLERK OF THE SENATE

hl.let.15315

14 February 2007

Senator Brett Mason
Chair
Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Mason

ESTIMATES HEARING – SCREENING OF VIDEO RECORDING

I understand that there is a proposal that a minister should be allowed to show a video recording at an estimates hearing.

Standing Order 26 provides:

> (4) When a committee hears evidence on the estimates, the chair shall, without motion, call on items of expenditure in the order decided upon and declare the proposed expenditure open for examination.
>
> (5) The committees may ask for explanations from ministers in the Senate, or officers, relating to the items of proposed expenditure.

These provisions have been in the orders of the Senate relating to estimates hearings since those hearings were initiated in 1970. They were deliberately designed to ensure that estimates hearings, which would be a substitute for the questioning of ministers in the chamber on appropriation bills, would be confined to putting questions to ministers and officers.

It has always been accepted that these provisions prevent a committee, in the course of estimates hearings, from adopting other methods of inquiry otherwise available to committees, such as the showing of video recordings or on-site visits.

This restriction on estimates hearings is a rule of the Senate, and cannot be suspended by a committee without the permission of the Senate. If the rule is to be altered, it must be altered by a deliberate decision of the Senate by motion after debate.

In the course of estimates hearings you and other chairs have properly ruled that the proceedings should be confined to questions to ministers and officers, and should not stray

into speeches, debates, demonstrations and gestures. Those sound rulings would be undermined if any committee were to depart from the stated rule. If a minister may show a video recording at an estimates hearing, on what grounds could other senators be prevented from doing so or from engaging in other forms of exhibition? And how could a committee deny any minister the right to begin every estimates hearing with a screening of a sixty minute video recording of the achievements of their department?

In the case of this proposal, the video recording relates to legislation which is also before the committee. In recent estimates hearings, your fellow chairs, on advice, have soundly ruled that estimates hearings may not be used to inquire into provisions of bills, as those inquiries are, under the determinations of the Senate, properly conducted in committee hearings on those bills and in proceedings in the Senate chamber. These sound rulings would also be undermined by the screening of the video recording.

The rules of the Senate are designed not only for the proper conduct of proceedings but for the protection of the rights of senators. Any arbitrary departure from those rules may be turned against those who initiate the departure, however innocent their reasons may be. It is an old parliamentary principle that those who overthrow the rules today will cry out for the protection of the rules tomorrow, and their cry may not then be heard.

You are no doubt aware of the immortal words of Mr Speaker Onslow, quoted at the beginning of Thomas Jefferson's *Manual of Parliamentary Practice*: "these forms, as instituted by our ancestors, operated as a check and controul on the actions of the majority, and that they were in many instances, a shelter and protection to the minority, against the attempts of power", to which Jefferson added his own observation: "by a strict adherence to which [rules], the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities."

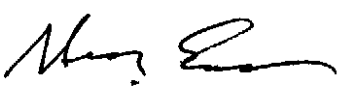
I hope that these principles will continue to animate senators.

If the minister wishes to screen the video recording and members of the committee wish to view it, this can be done outside the bounds of the estimates hearing.

A video recording, whether in the form of a video cassette or a DVD, is a form of document, and may be tabled in an estimates hearing, if the committee agrees. When tabled, it is automatically published, in accordance with the rule of the Senate that all estimates evidence is public. It may then be referred to in questions in the hearing, subject to what has been said about examination of the provisions of bills.

Neither of these courses would reduce the time available to the committee for the estimates hearings.

Yours sincerely



(Harry Evans)

AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

hl.let.15319

16 February 2007

Senator Brett Mason
Chair
Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Mason

ESTIMATES HEARING – STATEMENTS BY MINISTER

I refer to the statement by the minister at the commencement of this morning's estimates hearing. The statement contained two misunderstandings.

First, as my letter to the committee of 14 February 2007 made clear, the restriction of estimates proceedings to questions to ministers and officers applies only to estimates hearings. There is nothing to prevent committees inquiring into bills or conducting other inquiries from adopting other methods of proceeding. As I also indicated, this restriction was deliberately framed in the standing order applying to estimates hearings to preserve the rights of senators to ask questions. I did not invent it. It has nothing to do with embracing technology.

Second, the chairs' opening statement is not required by the standing orders relating to estimates proceedings or to other committee proceedings. These types of opening statements have expanded in response to misconceptions and misrepresentations about the rules applying to committee proceedings, and unauthorised attempts to restrict the rights of senators. There is nothing to prevent the chair simply referring to the statement or incorporating it in Hansard.

The minister later made another statement implying that I have raised some problem with the tabling of a DVD in the hearing. The earlier letter also made clear that there is nothing to prevent any form of document, including a DVD, being presented to the committee in an estimates hearing or otherwise.

Yours sincerely

(Harry Evans)